

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DWAYNE STRINGER,

Plaintiff,

Case Number 11-10601
Honorable Thomas L. Ludington

v.

OFFICER LENNOX, et al.,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING IN PART
AND DENYING IN PART PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL,
STRIKING PLAINTIFF'S COMPLAINT AND DISMISSING THE CASE WITHOUT
PREJUDICE AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AS MOOT**

This matter is before the Court on a report and recommendation (ECF No. 16) issued by Magistrate Judge Mark A. Randon on November 10, 2011. Judge Randon recommends that the Court strike and dismiss Plaintiff's complaint without prejudice because the complaint has not been signed despite Judge Randon's ordering Plaintiff to do so. Instead, Plaintiff filed a request that his complaint be dismissed without prejudice. While the Court will grant Plaintiff's motion for voluntary dismissal of his complaint without prejudice, grant Plaintiff's request to not pay the filing fee for this action, but deny Plaintiff's request to proceed in forma pauperis in a new case he plans to file. In most cases submitted by prisoners, the Court would be required to assess the civil filing fee notwithstanding the dismissal of the action, because the responsibility for paying the filing fee accrues at the time the complaint is filed. *McGore v. Wigglesworth*, 114 F.3d 601, 607 (6th Cir. 1997); *cf. In re Alea*, 286 F.3d 378, 381-82 (6th Cir. 2002) (dismissal of civil action filed by prisoner pursuant to 28 U.S.C. § 1915(g) did not obviate the obligation to pay the filing fee). In this case,

however, the case was never properly filed, the complaint will be stricken, and, therefore, no filing fee will be assessed.

As of today's date, no party has filed any objections to the magistrate judge's report and recommendation. The failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly, it is **ORDERED** that Judge Randon's report and recommendation (ECF No. 16) is **ADOPTED**.

It is further **ORDERED** that Plaintiff's motion for voluntary dismissal of action (ECF No. 15) is **GRANTED IN PART AND DENIED IN PART**. Plaintiff's case will be dismissed without prejudice and no filing fee assessed, but his request to proceed in forma pauperis is denied and he is directed to apply to proceed without prepayment of the filing fee once a new case is filed.

It is further **ORDERED** that Plaintiff's complaint is **STRICKEN** and the case is **DISMISSED WITHOUT PREJUDICE**.

It is further **ORDERED** that Defendants' motion for summary judgment (ECF No. 10) is **DENIED AS MOOT**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: December 7, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and upon Dwayne Stringer, #199442, at Gus Harrison Correctional Facility, 2727 E. Beecher Street, Adrian, MI 49221 by first class U.S. mail on December 7, 2011.

s/Tracy A. Jacobs

TRACY A. JACOBS